

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID JAKUBOWSKI,

Plaintiff,

v.

STEPHANIE CLENDENIN, et al.,

Defendants.

1:23-cv-01087-JLT-SKO

**ORDER TO SHOW CAUSE IN WRITING
WHY ACTION SHOULD NOT BE
DISMISSED FOR PLAINTIFF'S FAILURE
TO OPPOSE DEFENDANT'S MOTION TO
DISMISS**

21-DAY DEADLINE

Plaintiff David Jakubowski is a civil detainee proceeding pro se and *in forma pauperis* in a civil rights action pursuant to 42 U.S.C. § 1983.

I. BACKGROUND

In its Second Screening Order, the Court found Plaintiff's first amended complaint plausibly alleged a Fourteenth Amendment due process violation against Defendant Price. (Doc. 11.) As a result, on April 18, 2025, the Court issued its Order Directing Service by the United States Marshals Service Without Prepayment of Costs upon Defendant Brandon Price. (Doc. 14.)

On June 19, 2025, Defendant Price filed a Request for Judicial Notice in Support of Motion to Dismiss. (Doc. 16 at 1-22.) As part of the judicial notice request, Defendant also submitted a Memorandum of Points and Authorities in Support of Motion to Dismiss. (*See* Doc. 16-1 at 1-8.)

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1 On July 11, 2025, Defendant filed a Notice of Errata Regarding Notice of Motion and
2 Motion to Dismiss. (Doc. 18.) Defendant sought to correct “the inadvertent omission of the
3 Notice of Motion and Motion to Dismiss the Complaint in connection with Electronic Court
4 Filing (ECF) number 16.” (*Id.* at 2.) The notice of motion and motion to dismiss were
5 concurrently filed and Plaintiff was served that same date. (*Id.* at 2-3 & Doc. 19.)

6 Although more than 21 days have passed since Defendant’s service by mail of the
7 Memorandum of Points and Authorities in support of the motion to dismiss (Doc. 16-1 [on
8 6/19/2025]) and/or the notice of errata (Docs. 18 & 19 [on 7/11/2025]), Plaintiff has failed to
9 timely respond.

10 II. DISCUSSION

11 The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide,
12 “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may
13 be grounds for the imposition by the Court of any and all sanctions authorized by statute or Rule
14 or within the inherent power of the Court.” Local Rule 110. “District courts have inherent power
15 to control their dockets” and, in exercising that power, may impose sanctions, including dismissal
16 of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).
17 A court may dismiss an action based on a party’s failure to prosecute an action, obey a court
18 order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
19 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S.*
20 *Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court
21 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to
22 prosecute and to comply with local rules).

23 Further, this Court’s Local Rules state:

24 Opposition, if any, to the granting of a motion shall be served and
25 filed by the responding party not more than twenty-one (21) days
26 after the date of service of the motion. A responding party who has
27 no opposition to the granting of the motion shall serve and file a
28 statement to that effect, specifically designating the motion in
question. Failure of the responding party to file an opposition or
statement of no opposition may be deemed a waiver of any
opposition to the granting of the motion and may result in the
imposition of sanctions.

1 See Local Rule 230(l). Therefore, Plaintiff's opposition or statement of non-opposition to
2 Defendant's pending motion to dismiss was due, at the latest, on or before August 1, 2025, plus
3 time for mailing. Plaintiff has failed to timely file an opposition or statement of non-opposition to
4 the motion, and the time to do so has now passed.

5 **III. CONCLUSION AND ORDER**

6 Based on the foregoing, the Court **ORDERS** Plaintiff to show cause in writing, **within 21**
7 **days** of the date of service of this order, why sanctions should not be imposed for his failure to
8 comply with the Local Rules. Alternatively, within that same time, Plaintiff may file an
9 opposition or statement of non-opposition to Defendant's motion to dismiss.

10 **Plaintiff is advised that a failure to respond to this Order will result in a**
11 **recommendation that this action be dismissed for a failure to obey court orders and a**
12 **failure to prosecute.**

13
14 IT IS SO ORDERED.

15 Dated: **August 11, 2025**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE